



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

March 21, 2019

Representative James G. Townsend
House Republican Floor Leader
State Capitol Building
490 Old Santa Fe Trail
Santa Fe, NM 87501
james.townsend@nmlegis.gov
townsend@pvt.net

Sent Via Electronic and First-Class Mail

Re: Submission of Draft Petition for Referendum for Chapter 45 of New Mexico Laws of 2019, an Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties

Dear House Republican Floor Leader Townsend:

On March 11, 2019, you submitted to my office a draft referendum petition for Chapter 45 of New Mexico Laws of 2019, An Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties. Your cover letter, submitted with the draft petition, notes the opinion of some New Mexico law enforcement officers and the alleged unconstitutionality of the underlying legislation. However, the law does not allow me the discretion to consider those factors as part of my technical review of a referendum petition. As New Mexico Secretary of State, my duty is to review the petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law.

After a careful and thorough review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. You have failed to submit a suggested popular name for the law, which is the object of the petition (Section 1-17-8(A));
2. You have failed to submit a referendum petition wherein “each page...upon which signatures of petitioners are to be solicited are an exact copy of all other pages of the referendum petition,” (Section 1-17-5(A));
3. You have added the signature of the Secretary of State on page 2, when no such signature is required by law (Sections 1-17-1 to -14);
4. You have failed to submit a referendum petition in the form proscribed by Section 1-17-2; and,
5. Under Article IV, Section 1 of the New Mexico Constitution, Chapter 45 of New Mexico Laws of 2019, An Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

In your March 11 letter, you mistakenly indicate that this law is subject to referendum based on the lack of “immediacy” and an emergency clause provided for in Article IV, Section 23 of the New Mexico Constitution, and you cite to Todd v. Tierney, 1933-NMSC-029, 38 N.M. 15, 27 P.2d 991, in support of your argument. While Tierney never reached the question of whether the law met the requirements of Article IV, Section 1 of the New Mexico Constitution, the cases that followed clearly demonstrate that neither “immediacy” nor an emergency clause are required factors in determining whether a law is subject to referendum under Article IV, Section 1. *Id.* ¶65. See Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192 (holding that a law imposing an excise tax on cigars and cigarettes and

allocating the proceeds of the tax to an old age assistance provided for the preservation of public health and was therefore excepted from referendum), and Otto v. Buck, 1956-NMSC-040, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). In fact the New Mexico Supreme Court noted in Otto that, “[w]hen we know that the word ‘necessary’ and ‘immediate’ were wittingly rejected from the exception clause of our constitution, we must recognize we have no freedom to put them in the exception by judicial construction.” *Id.* ¶ 18.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” *Id.* ¶ 20. This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7.

Referring to Chapter 45 of New Mexico Laws of 2019, you acknowledge in your cover letter that it “may be argued that it serves the public peace, health, and safety.” Aside from this acknowledgement, I have undergone the process of carefully examining the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Chapter 45 of New Mexico Laws of 2019, as required by law.

Senate Bill 8, which ultimately became Chapter 45 of New Mexico Laws of 2019, was pre-filed prior to the start of the 2019 Legislative Session. The bill provided for background checks on certain sales of firearms. On January 16, 2019, during her State of the State address to a joint session of the State House of Representatives and State Senate, Governor Lujan Grisham stated, “[a]nd I want our educators, our students and our parents to hear me again: We will do everything in our power to ensure safety in your classrooms, in your community libraries, in your homes and public spaces. We all have a Constitutional right to

be safe in our communities. Four hundred New Mexicans lose their lives to gun violence every year... That means when this legislature adjourns, I expect to sign a bill that will ban those convicted of assault from purchasing or possessing a gun, I expect strengthened background checks, and I expect tighter restrictions on safekeeping to ensure children do not have access to guns in the home. With common-sense reforms, we can build a state where people who should not have firearms, don't, simple as that."

During the 2019 Legislative Session, there was also public testimony on Senate Bill 8 in legislative committee hearings. At a January 30, 2019 Senate Judiciary Committee hearing, Committee Chairman Senator Richard Martinez stated that “[t]his bill is about saving lives and keeping guns out of the hands of criminals.” At this same hearing and at other committee hearings there was testimony in support of Senate Bill 8 from multiple law enforcement officials, the Bernalillo County District Attorney, the Director of Moms Demand Action New Mexico and other groups and citizens, who discussed personal tragedies attributed to gun violence and statistics outlining how states who had implemented similar legislation have seen decreases in gun violence and deaths. The Director of Moms Demand Action noted the names of leaders and organizations who supported Senate Bill 8, including numerous heads of law enforcement agencies, Mayors, the New Mexico Chapter of American College of Physicians and the New Mexico Public Health Association. Also at the January 30, 2019 Senate Judiciary committee hearing, New Mexico Voices for Children Senior Policy Advisor Bill Jordan testified as to his belief that Senate Bill 8 would reduce child gun deaths in New Mexico.

On March 4, 2019, upon passage of Senate Bill 8 by both chambers, Governor Lujan Grisham issued a press release titled “Governor Lujan Grisham cheers House passage of legislation expanding background checks, boosting public safety.” Upon signing Senate Bill 8 into law on March 8, 2019, Governor Lujan Grisham issued another press release titled “Gov. Lujan Grisham signs Senate Bill 8, enacting a meaningful, effective check on lethal violence in New Mexico communities”. In that release the Governor provided that “[t]he new law improves public safety by expanding required background checks on firearm purchase to

include private gun sales, closing loopholes for certain sales like those made online or at gun shows.” The release further quoted Senate Bill 8 sponsor, Senator Richard Martinez as stating that “this legislation is about one thing: saving lives” and bill sponsor Representative Debbie Sariñana referred to the bill as “a common-sense measure that will keep New Mexicans safe and keep guns out of the hands of criminals.”

This legislative history and contemporaneous public statements definitively establish that Chapter 45 of New Mexico Laws of 2019 bears a valid, reasonable relationship to the preservation of public peace, health or safety, and it was clearly enacted by the legislature for those purposes. Therefore this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Maggie Toulouse Oliver".

Maggie Toulouse Oliver
New Mexico Secretary of State